

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Wayne R. Andersen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99 C 3844	DATE	7/2/2003
CASE TITLE	Smith et al vs. Sprint et al		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] **Enter MEMORANDUM, OPINION AND ORDER: We deny Intervenor Chem-Tronics, Inc.'s Objections to the 2/11/2003 order of Magistrate Judge Geraldine Soat Brown.**
- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input checked="" type="checkbox"/> Copy to judge, magistrate judge. <i>Brown</i>	courtroom deputy's initials <i>TSA</i>	Date/time received in central Clerk's Office <i>03 JUL - 3 AM 8:25</i>	number of notices	Document Number <i>356</i>
			<i>JUL 3 2003</i> date docketed	
			<i>em</i> docketing deputy initials	
			date mailed notice	
			mailing deputy initials	

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JUL 3 2003

Intervenors object to two specific portions of Magistrate Judge Brown's February 11, 2003 Order, namely: (1) the portion of the Order denying certain intervenors' motion to require Defendants to provide a comprehensive list identifying all right-of-way providers, outside those contained in the longitudinal agreements with the railroads, who would be released by the Settlement Agreement at issue; and (2) the portion of the Order granting Defendants' Motion for Protective Order as to the Rule 30(b)(6) depositions sought by certain intervenors. This second objection is now moot because all of the Rule 30(b)(6) depositions have taken place. Thus, we will not address the portion of Magistrate Judge Brown's Order regarding the Motion for Protective Order as to the Rule 30(b)(6) depositions.

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## DISCUSSION

### I. Timeliness Of The Objections

First, it should be pointed out that Intervenor's Objections are untimely, and as such cannot be the basis of any modification to the Order. Pursuant to Federal Rule of Civil Procedure 72(a), a party objecting to a magistrate judge's order must serve and file objections to that order "[w]ithin 10 days after being served with a copy of the magistrate judge's order; a party may not thereafter assign as error a defect in the magistrate judge's order to which objection was not timely made."

As noted above, the Order at issue here was entered on February 11, 2003, and shows that notice of the Order was mailed to the parties that same day. Yet Intervenor's Objections were not filed until March 3, 2003, some twenty days after entry of the Order. Even allowing for mailing time, Intervenor's Objections are untimely, because there is no claim or evidence by Intervenor that they did not receive the Order until February 21, 2003 (the earliest receipt date which could possibly make Intervenor's Objections timely). As such, Intervenor's Objections to the Order are untimely. However, even if we were to find that Intervenor's Objections were timely filed, we would still not be inclined to grant them for the reasons stated below.

### II. Disclosure Of Unidentified Right-Of-Way Providers

Intervenor's first complaint is that Magistrate Judge Brown did not order Defendants to identify those right-of-way providers to be released by the Settlement Agreement. The parties intend, under the terms of the Settlement Agreement, to release any railroad granting an easement or right-of-way to the Settling Defendants adjacent to any class member's property. Magistrate Judge Brown ruled that the Settling Defendants and Plaintiffs have already provided the identity

of those to be released Right-of-Way Providers that granted more than twenty-five miles of access to the defendants, by producing the longitudinal contracts.

Contrary to Magistrate Judge Brown's Order, Intervenor request a comprehensive list of all Right-of-Way Providers to be released by the Settlement Agreement. We agree with Magistrate Judge Brown that no such comprehensive list exists, that it would be unduly burdensome and virtually impossible to prepare such a list, and that such list would not significantly aid the Court in a preliminary determination of the fairness of the settlement.

First, it is clear that no such comprehensive list currently exists. The Defendants have produced to Intervenor copies of all agreements between Defendants and the railroads. Since the Settlement Agreement deals with right-of-way along railroads, these agreements will reveal the identities of the vast majority Right-of-Way Providers to be released by the Settlement Agreement. However, it would not be possible for defendants to identify all Right-of-Way Providers at this time. A railroad with whom a Settling Defendant has contracted may have changed its name, been sold, or otherwise changed hands, such that the current right-of-way holder may be unknown to Defendants, further complicating the creation of a comprehensive list of released Right-of-Way Providers. At the end of the day, Intervenor are already in possession of the most "comprehensive" information Defendants currently possess as to Right-of-Way Providers to be released. We find this to be sufficient at this stage of the litigation.

Beyond the fact that the list requested by Intervenor does not exist, Intervenor have failed to show how the identity of the "unidentified" Right-of-Way Providers is relevant to the Court's determination of whether the Settlement Agreement at issue in this case is fair and reasonable. Intervenor attempt to get around this problem by claiming that such information is

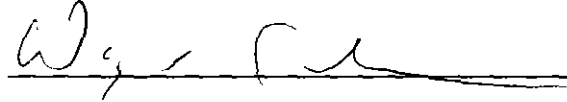
necessary because some members may have potential claims against alleged unidentified Right-of-Way Providers which might be released by the Settlement Agreement for little or no consideration. However, Intervenor's have identified no separate claims against any alleged "unidentified Right-of-Way Providers" which would be released as a result of the Settlement Agreement. The claims against the Right-of-Way Providers that will be released arise out of the same transactions and involve the same alleged damages as the claims against the Settling Defendants. There is no need to identify Right-of-Way Providers explicitly in order to assess the fairness of the Settlement. Moreover, to the extent Intervenor's believe they need that information, Defendants have provided as much of it as they can, by producing their agreements with Right-of-Way Providers. Finally, specific identification of Rights-of-Way, which will occur prior to Notice, will be by reference to the Right-of-Way Providers. This will provide all class members with information concerning the parties to be released. As recognized by Magistrate Judge Brown, additional identification of other Right-of-Way Providers at this point would not "move[] the question of the fairness hearing significantly down the field."

For these reasons, we deny Intervenor's' Objection to the Magistrate Judge Brown's Order.

CONCLUSION

For the foregoing reasons, we deny Intervenor Chem-Tronics, Inc.'s Objections to the February 11, 2003 Order of Magistrate Judge Geraldine Soat Brown.

It is so ordered.

A handwritten signature in black ink, appearing to read "Wayne R. Andersen", written over a horizontal line.

Wayne R. Andersen

United States District Judge

Dated: July 2, 2003